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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 249

SUN OIL COMPANY, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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FEDERAL POWER COMMISSION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Sun Oil Company, prays that a writ of certiorari be issued to review the judgment entered April 25, 1962 by the United States Court of Appeals for the Fifth Circuit (Cause No. 19001) and the order of the Federal Power Commission ("Respondent") issued March 3, 1961, as amended by the order issued March 31, 1961. The judgment dismissed the petition to review the order issued March 3, 1961, as amended by the order issued March 31, 1961.

OPINION BELOW

The order of the Respondent (sometimes called "Commission") issued March 3, 1961 (R. 57-63, J.A. 5-8)[1] is reported in Volume 25, Federal Power Commission Reports, at pages 379-382. The order of Respondent issued March 31, 1961, amending the order issued March 3, 1961 (R. 80-83, J.A. 28-31), is reported in Volume 25, Federal Power Commission Reports, at pages 609-610. The opinion of the Court of Appeals filed April 25, 1962 is not yet reported, and is printed in Appendix A, pp. 1a-5a; R. 121-125.

JURISDICTION

The judgment of the Court of Appeals was entered on April 25, 1962 (Appendix A, p. 5a; R. 126). Rehearing was denied May 29, 1962 (Appendix A, p. 5a; R. 136). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and section 19(b) of the Natural Gas Act.

QUESTION PRESENTED

Is Respondent's order issued March 3, 1961, as amended by its order issued March 31, 1961, which declares inoperative and of no effect at law all flexible pricing provisions, except those specifically exempted therein, in contracts executed by independent producers on or after April 3, 1961, for the sale or transportation of natural gas subject to the jurisdiction of Respondent, reviewable under section 19(b) of the Natural Gas Act?

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[1] Record references are to the transcript of record prepared by the Clerk of the United States Court of Appeals for the Fifth Circuit. Pages 51 through 94 of such record consists of the joint appendix filed with the Court of Appeals and references thereto are also included when applicable.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the fifth amendment to the Constitution of the United States and sections 4, 5, 7, 16 and 19 of the Natural Gas Act, as amended (15 U.S.C. §§ 717c, 717d, 717f, 717o and 717r), section 402(a) of the Communications Act of 1934, as amended (47 U.S.C. § 402(a)), sections 2 and 4 of The Judicial Review Act (5 U.S.C. §§ 1032, 1034), and section 10 of the Administrative Procedure Act (5 U.S.C. § 1009), pertinent provisions of which are printed in Appendix B, pp. 6a-17a.

STATEMENT OF THE CASE

The proceeding before the Respondent, designated Docket No. R-153, was initiated by a Notice of Proposed Rulemaking dated April 4, 1956 (R. 54-56, J.A. 2-4). Respondent, by such notice, proposed to amend § 154.93 of its General Rules and Regulations (18 C.F.R. § 154.93) to provide that certain types of contract pricing provisions set forth in contracts subject to the Commission's jurisdiction would not be accepted for filing as rate schedules pursuant to section 4 of the Natural Gas Act. Almost five years later, on March 3, 1961, the Respondent issued an order designated Order No. 232. Commissioner Kline dissented in part (R. 57-63, J.A. 5-11). In general, such order promulgated definitions for a "definite escalation clause" and for an "indefinite escalation clause," and declared that any of the latter type clauses tendered for filing on or after April 3, 1961 "* * * shall be inoperative and of no effect at law" (R. 58-60, J.A. 6-8).

The order issued March 3, 1961, by its own term was to become effective April 3, 1961. Such order did per-

mit the filing of views and comments on or before March 20, 1961 (R. 60, J.A. 8). Petitioner advised the Commission by letter filed March 20, 1961, that it would file an application for rehearing setting forth the reasons why Petitioner believed the order would exceed Respondent's authority under the Natural Gas Act, would be contrary to the public interest and the administration of the Natural Gas Act, would deprive petitioner of its property without due process of law, and should be set aside (R. 64-65, J.A. 12-13). This application for rehearing, pursuant to section 19(b) of the Natural Gas Act, was timely filed on March 31, 1961 (R. 65-78, J.A. 13-26). The Commission took no action on such application for a period of thirty days and under section 19(a) of the Natural Gas Act and section 1.34(e) of the Respondent's Rules of Practice and Procedure under the Natural Gas Act, such application would be deemed denied on April 30, 1961. By letter dated May 4, 1961, the Commission stated Order No. 232, as modified by Order No. 232A, hereinafter discussed, prescribed a general rule upon which an application for rehearing would not lie under section 19 of the Natural Gas Act. In addition, the order stated the "petition" had been considered as a comment in response to Order No. 232 (R. 93, J.A. 41).

By Order No. 232A issued March 31, 1961, the Respondent changed certain findings in Order No. 232, and changed the provisions proscribing most flexible pricing clauses by adding the following proviso to section 154.93 of the Commission's Regulations under the Natural Gas Act:

> " '*Provided*, That in contracts executed on or after April 3, 1961, for the sale or transportation of natural gas subject to the jurisdiction of the Commis-

sion, any provision for a change of price other than the following provisions shall be inoperative and of no effect at law; the permissible provisions for a change in price are:

(1) provisions that change a price in order to reimburse the seller for all or any part of the changes in production, severance, or gathering taxes levied upon the seller;

(2) provisions that change a price to a specific amount at a definite date; and

(3) provisions that, once in five-year contract periods during which there is no provision for a change in price to a specific amount [paragraph (2)], change a price at a definite date by a price-redetermination based upon and not higher than a producer rate or producer rates which are subject to the jurisdiction of the Commission, are not in issue in suspension or certificate proceedings, and are in the area of the price in question'" (R. 82-83, J.A. 30-31).

The Respondent changed paragraph (2) of the findings in its Order No. 232. As changed, such paragraph as set forth in Order No. 232A read as follows:

"(2) Gas supply contracts containing provisions for rate changes dependent or based in whole or part on indefinite escalation clauses such as favored-nation, unlimited redetermination or renegotiation, spiral escalation, inflationary adjustment, price indices and revenue-sharing clauses have contributed to instability and uncertainty concerning prices of gas and service expansion by natural gas companies. As found by us in the proceeding of *The Pure Oil Company*, Docket No. G-17930, Opinion No. 341, these indefinite escalation provisions are in general contrary to the public interest. Such escalation provisions, therefore, are

generally undesirable, unnecessary and incompatible with the public interest for the due and proper development of natural gas service by natural gas companies. However, limited price-redetermination provisions appear appropriate to meet the difficulty of pricing for long and unpredictable periods and to encourage the negotiation of long term contracts. Limited price-redetermination provisions, as hereinafter ordered, appear to be in the public interest and should be permitted in producer contracts for the sale or transportation of natural gas subject to our jurisdiction" (R. 81-82, J.A. 29-30).

On April 28, 1961, Petitioner filed an application for rehearing of the order issued March 3, 1961, Order No. 232, as amended by the order issued March 31, 1961, Order No. 232A (R. 84-91, J.A. 32-39). By a letter dated May 5, 1961, the Respondent rejected this application for rehearing for the stated reason that Order No. 232 issued March 3, 1961, as modified by Order No. 232A issued March 31, 1961, prescribed a general rule upon which an application for rehearing does not lie under section 19 of the Natural Gas Act (R. 94, J.A. 42).

On May 29, 1961, Petitioner filed, in the United States Court of Appeals for the Fifth Circuit, a petition to review and set aside Order No. 232, as modified and amended by Order No. 232A (R. 2-32). After the filing of briefs and hearing oral argument, the court, on April 25, 1962, issued its opinion and judgment dismissing the petition to review (Appendix A, pp. 1a-5a; R. 121-126). Oral argument in this proceeding was held in conjunction with a motion to dismiss in Case No. 19424, which Petitioner contended was a case involving a review of a specific application of Order No. 232, as amended by Order No. 232A. The Fifth Circuit

also sustained Respondent's motion to dismiss in that proceeding and Petitioner is concurrently filing a Petition For a Writ of Certiorari with respect to that action of the court below.

On May 16, 1962, Petitioner filed a petition for rehearing in this proceeding (R. 127-135). The court, by an order dated May 29, 1962, denied such petition (Appendix A, p. 5a; R. 136). Upon motion filed June 8, 1962 (R. 137-140), the court, by order entered June 14, 1962, stayed the issuance of the mandate for a period of thirty days, such stay to be continued in force until final disposition by the Supreme Court, provided that within thirty days from the date of the June 14, 1962 order there shall be filed with the Clerk of the Court of Appeals a certificate that a certiorari petition and the record have been filed with the United States Supreme Court (R. 141).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW IS CONTRARY TO THIS COURT'S COLUMBIA BROADCASTING SYSTEM AND STORER DECISIONS

The order issued March 3, 1961, as amended by the order issued March 31, 1961, adversely affects contractual and other rights in a manner similar to the orders reviewed in this Court's decisions in *Columbia Broadcasting System, Inc.* v. *United States*, 316 U.S. 407 (1942) and *United States* v. *Storer Broadcasting Company*, 351 U.S. 192 (1956). The rights which are adversely affected by such order are next discussed.

A. The Order Adversely Affects Contractual and Other Rights

The regulations promulgated by the order under review, Petitioner submits, alter and adversely affect the contract and rate-making powers of natural gas

companies, and their rate-changing and contract-changing powers. The rights so altered and adversely affected are those defined by this Court's *Mobile* decision[2] and reaffirmed in this Court's *Memphis* decision.[3] In its opinion in the *Memphis* case, this Court stated:

> "'* * * except as specifically limited by the Act, the rate-making powers of natural gas companies were to be no different from those they would possess in the absence of the Act: to establish ex parte, and change at will, the rates offered to prospective customers; or to fix by contract, and change only by mutual agreement, the rate agreed upon with a particular customer. No more is necessary to give full meaning to all the provisions of the Act: consistent with this, § 4(d) means simply that *no* change—neither a unilateral change to an ex parte rate nor an agreed-upon change to a contract—can be made by a natural gas company without the proper notice to the Commission * * *' " [358 U.S. at pp. 110-111].

In addition, this Court in its *Memphis* decision stated:

> "* * * Mobile makes it plain that '§ 4(d) on its face indicates no more than that *otherwise valid* changes cannot be put into effect without giving the required notice to the Commission.' (350 U.S. at 339, 340). (Italics supplied.) The necessary corollary of this proposition is that changes which in fact are 'otherwise valid' in the light of the relationship between the parties can be put into effect under § 4(d) by a seller through giving the re-

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[2] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

[3] *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958).

quired notice to the Commission. Mobile expressly notes that in the absence of any contractual relationship rates determined ex parte by the seller may be filed under § 4(d) * * *" [358 U.S. at 1121.

There can be no question that under this broad language Petitioner and all other natural gas companies have the right to enter into gas purchase contracts which include any pricing provisions that are valid between the parties. The above language obviously contemplates that a natural gas company will file these contracts as rate schedules and will file rate changes based on such contracts by giving the notice required by section 4(d) of the Act. The order of which Petitioner is seeking review would declare inoperative and of no effect at law all flexible pricing provisions except those specified in the order. This clearly has an adverse effect on Petitioner's right to enter into such contract arrangements and to file changes in rates based on such arrangements.

Respondent's power and authority to review rates and contract provisions under the rate review provisions found in sections 4 and 5 of the Natural Gas Act are not at issue in this proceeding. Those powers may only be exercised after observing the procedural safeguards of these sections. To eliminate or alter contractual rights with respect to rates, by declaring "otherwise valid" contract pricing provisions inoperative and of no effect at law, as Respondent has done by adopting the rules in question in this proceeding, would exceed the Respondent's rate review powers. Petitioner clearly has the right to have all valid contract provisions reviewed by Respondent under sections 4 and 5 of the Act. This right to review is eliminated with respect to most flexible pricing provisions when, as

here, the Respondent declares them to be inoperative and of no effect at law.

In its CATCO decision,[4] this Court made it clear that a natural gas company has the right to propose the terms under which it intends to commit its natural gas to the interstate market pursuant to the certificate requirements of section 7 of the Natural Gas Act, when the Court stated:

> "* * * * Certainly the filing of the application for a certificate did not constitute a dedication to the interstate market of the gas recoverable under these leases. Nor is there doubt that the producers were at liberty to refuse conditional certificates proposed by the Commission's second order * * * *" [360 U.S. at 387-388].

The rule adopted by the order which Petitioner contends is subject to review under section 19(b) of the Act in effect requires that any certificate proposal by an independent producer contain only the pricing provisions allowed in the order. All others are declared to be inoperative and of no effect at law.

The rule established by the Commission's order, if it is construed to deny the right to make *Memphis*-type rate change filings,[5] will thereby prohibit natural gas companies from contracting to change at will (subject

[4] *Atlantic Refining Company* v. *Public Service Commission of the State of New York*, 360 U.S. 378 (1959).

[5] Such as those at issue in *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958). In that case, this Court stated: "United, like the seller of an unregulated commodity, has the right in the first instance to change its rates as it will, unless it has undertaken by contract not to do so" [358 U.S. at 113].

to the Commission's powers of review) the rates at which a natural gas company will sell its gas for resale in interstate commerce. This Court's decisions in the *Mobile* and *Memphis* cases, *supra*, hold that Petitioner has this right.

In the opinion of the Court of Appeals for the District of Columbia Circuit, an order or regulation which affects the initial rate-making or rate-changing powers which remain undefined and unaffected by the Natural Gas Act, "* * * amount to a legislative change which is beyond the authority of the Commission" *Willmut Gas and Oil Company v. Federal Power Commission*, 294 F. 2d 245 at 250 (1961), *cert. denied* U.S. (No. 506, Oct. Term 1961) 30 L.W. 3232, *rehearing denied* 30 L.W. 3273. The Commission's authority to issue rules and regulations is delineated by section 16 of the Natural Gas Act. The Respondent relies upon this section as authority for the issuance of the order of which Petitioner unsuccessfully sought review in the court below. But as the court stated in *Willmut*, *supra*, Respondent's authority under section 16 is expressly limited to those rules which "'* * * it may find necessary or appropriate to *carry out the provisions of this Act*,'" [294 F. 2d at 250] (Emphasis added) and not to enlarge its powers under the Act. In *Willmut*, *supra*, the court held, with respect to the language in this section of the Act, that the power

> "* * * granted by this statutory language does not authorize an order, rule or regulation which would nullify or restrict the right of a natural gas company to change the rates under which it offers to furnish service, * * *" [294 F. 2d at 250].

In *Manhattan General Equipment Co.* v. *Commissioner of Internal Revenue*, 297 U.S. 129 (1936), this

Court dealt with the power of an administrative agency to prescribe rules and regulations in the following language:

> "The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law—for no such power can be delegated by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity. * * * And not only must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable" [297 U.S. at 134, 135].

In holding that rules of general applicability issued by the Federal Communications Commission exceeded that Commission's authority in *Federal Communications Commission* v. *American Broadcasting Co.*, 347 U.S. 284 (1954), this Court stated, "* * * the Commission's power in this respect is limited by the scope of the statute" [347 U.S. at 290].

Thus, it is clear that the Commission's rules, as promulgated in the order of which Petitioner seeks review, clearly deprive Petitioner of the fundamental contractual and other rights discussed herein, and are not in harmony with but contrary to sections 4, 5 and 7 of the Natural Gas Act. Moreover, these rules exceed the Commisson's rulemaking authority under section 16 of the Act. The rules clearly violate the fundamental constitutional safeguard set forth in the fifth amendment to the Constitution that a person shall not be deprived of his property without due process of law. Accordingly, for reasons set forth in the next subsection, Petitioner respectfully submits that its rights are

adversely affected by Respondent's order and under this Court's decisions in the *Columbia Broadcasting System* and *Storer* cases, *supra*, the order is reviewable.

B. The Order Is Reviewable Under This Court's Columbia Broadcasting System and Storer Decisions

The court below appears to have based its decision refusing to review Respondent's Order No. 232, as amended, primarily on the premise that the orders "* * * do not adjudge rights or obligations nor direct the taking or refraining from any particular action" (Appendix A, pp. 1a-5a; R. 123). However, this Court has in several cases, including its *Columbia Broadcasting System* and *Storer* decisions, *supra*, reviewed rules of general applicability.[6]

In the *Columbia Broadcasting System* decision, this Court set forth the criteria for review of orders of general applicability:

> "* * * It is enough that, by setting the controlling standards for the Commission's action, the regulations purport to operate to alter and affect adversely appellant's contractual rights and business relations with station owners whose applications for licenses the regulations will cause to be rejected and whose licenses the regulations may cause to be revoked * * *" [316 U.S. at 422].

Although it appears that the contractual rights affected in the *Columbia Broadcasting System* case were those set forth in existing contracts, and the order here

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[6] *National Broadcasting Company, Inc.* v. *United States*, 319 U.S. 190 (1943); *Federal Communications Commission* v. *American Broadcasting Company, Inc.*, 347 U.S. 284 (1954); *American Telephone and Telegraph Co.* v. *United States*, 299 U.S. 232 (1936); *American Trucking Associations* v. *United States*, 344 U.S. 298 (1953).

involved is not applicable to contracts executed prior to April 3, 1961, this Court considered, in the *Storer* case, *supra*, the effect of rules involved on future business affairs. In the *Storer* opinion, this Court said:

> "We think respondent had standing to sue at the time it exercised its privilege. The process of rulemaking was complete. It was final agency action, 5 USC § 1001(e) and (g), by which Storer claimed to be 'aggrieved.' When the authority to appeal was substantially the same, we held that an appellant who complained of the grant of a license to a competitor because it would reduce its own income had standing to appeal * * * " [351 U.S. at 198].
>
> * * * *
>
> "'The regulations here under consideration presently aggrieve the respondent. The Commission exercised a power of rulemaking which controls broadcasters. The Rules now operate to control the business affairs of Storer. Unless it obtains a modification of this declared administrative policy, Storer cannot enlarge the number of its standard or FM stations" [351 U.S. 199-200].

The analysis in subsection A, *supra*, shows that the rules adopted by Respondent will have an adverse effect on Petitioner's rights as delineated by this Court, including the very important right to make contractual provisions which recognize normal price variations for the sale of gas under long term contracts. Additionally, this analysis shows that the rules will adversely affect Petitioner's business affairs, by severely limiting its option to protect itself through the use of various flexible pricing provisions. Contrary to the findings of the Commission in *The Pure Oil Company* case, 25 F.P.C. 383 (R. 58, 81-83, J.A. 6, 29-31), that indefinite escalation provisions are contrary to the public interest,

the Court of Appeals for the Third Circuit in *Shell Oil Company* v. *Federal Power Commission*, 292 F. 2d 149 (1961),[7] *cert. denied* U.S. (No. 399, Oct. Term 1961) 30 L.W. 3154, stated:

> "Nor can we agree that the flexible pricing arrangement of the contract makes it severable to the degree that it does not come into effect with respect to the periods beyond the first until the actual price for each has been determined. *The motivation behind the periodic price adjustments is recognition of the probabilities of normal price variation in gas during the long duration of the contract. The principle makes sense against any contrary view that might be urged. Particularly, is it desirable as compared to an attempt to state rigid price figures for the whole future twenty five year operation* * * *" [292 F. 2d at 152] (Emphasis added).[8]

The quotation above from the *Storer* case also clearly indicates that the difference in the statutory route involved in the *Columbia Broadcasting System* case, *supra*,[9] and the *Storer* case, *supra*,[10] is immaterial.

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[7] The decision was on remand from this Court's decision in *Texas Gas Transmission Corp., et al.* v. *Shell Oil Company*, 363 U.S. 263 (1960).

[8] In this case the court had under consideration a periodic price redetermination provision, a form of flexible price provision apparently condemned by the Commission's rules, under which the price was to be determined at stated periods by the buyer and seller, but in the event they could not agree the price was to be determined by arbitration.

[9] The opinion recites review was sought pursuant to section 402(a) of the Communications Act and the Urgency Deficiencies Act [316 U.S. at 408].

[10] The opinion recites that review was sought under 5 U.S.C. § 1034 (section 4 of The Judicial Review Act), 47 U.S.C. § 402(a) (section 402(a) of the Communications Act of 1934, as amended) and 5 U.S.C. § 1009 (section 10 of the Administrative Procedure Act) [351 U.S. at 195].

Sections 2 and 4 of The Judicial Review Act, under which review was sought in the *Storer* case, appear similar in all material respects to section 19(b) of the Natural Gas Act, pursuant to which this review is sought. Hence, the *Columbia Broadcasting System* and *Storer* precedents should be considered as controlling with respect to the order issued March 3, 1961, as amended by the order issued March 31, 1961, and under these precedents, Petitioner believes it has shown itself to be aggrieved and entitled to judicial review.

II. THE APPEAL INVOLVES IMPORTANT LEGAL AND OTHER CONSIDERATIONS

Petitioner believes that a review of the order issued March 3, 1961, as amended by the order issued March 31, 1961, is important to the administration of the Natural Gas Act. This Court in its *Memphis* case, *supra*, not only reaffirmed that the initial rate-making and rate-changing powers of natural gas companies remain undefined and unaffected by the Natural Gas Act, but stated that such rights were protected through preserving the integrity of private contractual arrangements which are needed in the light of business realities:

> "* * * Business reality demands that natural gas companies should not be precluded by law from increasing the prices of their product whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance; otherwise procurement of the vast sums necessary for the maintenance and expansion of their systems through equity and debt financing would become most difficult, if not impossible. This concern was surely a proper one for Congress to take into account in framing its regulatory scheme

> for the natural gas industry, * * * and we think that it did so not only by preserving the 'integrity' of private contractual arrangements for the supply of natural gas, 350 U.S. at 344 (subject of course to any overriding authority of the Commission), but also by providing in § 4 for the earliest effectuation of contractually authorized or otherwise permissible rate changes consistent with appropriate Commission review." [358 U.S. at 113-14].

This statement is equally applicable to independent producers, which it is believed provided the major portion of gas necessary to supply the some 30,554,000 natural gas utility customers in 1960, the sales to which customers produced some $5,306,556,000 in revenues in 1960. (See Forty-first Annual Report of the Federal Power Commission, 1961, p. 63.)

In its *Mobile* decision, *supra*, this Court also stated:

> "* * * By preserving the integrity of contracts, it permits the stability of supply arrangements which all agree is essential to the health of the natural gas industry * * *" [350 U.S. at 344].

Petitioner respectfully submits that Respondent's order here under review seeks to limit the private contractual arrangements which Congress intended to preserve in order to accomplish, among others, the purposes mentioned in the above quotations. The extent to which Respondent's order seeks to limit private contractual arrangements is indicated by the terms of the proviso to section 154.93 of the Commission's Regulations under the Act. The proviso permits only one type of flexible pricing provision; namely, one price redetermination at a specific date in any one five-year contract period, provided there is no provision for a change in

price to a specific amount in such five-year period, and also provided that the price so redetermined shall not be higher than a producer's rate or producers' rates which are subject to the jurisdiction of the Commission, are not in issue in suspension or certificate proceedings, and are in the area of the price in question (R. 82-83, J.A. 30-31). The limitations thus imposed are clearly contrary to the intent of Congress to preserve private contractual arrangements.

Moreover, if the order proscribing flexible pricing provisions is upheld, it will deprive the producers of natural gas of an equitable means of protecting themselves over the years against the problems of long-term contracts for the sale of natural gas. Cf. *Shell Oil Company* v. *Federal Power Commission, supra.* This Court, in its *Memphis* decision, *supra,* as Petitioner interprets it, declared that natural gas companies have a right to this long-term protection.

CONCLUSION

Respondent's Order No. 232 issued March 3, 1961, as amended by Order 232A issued March 31, 1961, adversely affects Petitioner's rights and is a reviewable order under section 19(b) of the Natural Gas Act. In Petitioner's view, the order, unless reviewed and set aside, will have a far-reaching and adverse effect on the use of private contractual arrangements by natural gas companies as intended by Congress and will be contrary to the regulatory scheme of the Natural Gas Act.

Accordingly, pursuant to section 19(b) of the Natural Gas Act and paragraph 1(b) of Rule 19 of the

Rules of this Court, Petitioner prays that a writ of certiorari be granted.

Respectfully submitted,

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Certificate of Service

I certify that the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was served upon Respondent, the Federal Power Commission, by mailing a copy thereof, postage prepaid, to each of the following attorneys for Respondent on the 14th day of July, 1962:

Archibald Cox, Solicitor General
Department of Justice
Washington 25, D. C.

Richard Solomon, General Counsel
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